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IN THE

Supreme Court of the United States

CITY OF COLUMBUS, *et al.*,
Petitioners,

v.

OURS GARAGE AND WRECKER SERVICE, INC., *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR *AMICUS CURIAE* CARGO AIRLINE ASSOCIATION IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICUS CURIAE* [1]

The Cargo Airline Association ("CAA") is a trade association of all-cargo air carriers and all-cargo motor carriers affiliated with air carriers through common controlling interest, including United Parcel Service, Federal Express, DHL Airways, Emery Worldwide, and Airborne Express.

In 1994, Congress enacted the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), Pub. L. No. 103-305, 108 Stat. 1569. The FAAAA preempts State and local laws "related to a price, route, or service" of cargo carriers, including not only a "motor carrier" of property such as respondent towing company, *see* 49 U.S.C. § 14501(c)(1) (Supp. V 1999), but also "an air carrier or carrier affiliated with a direct air carrier through common controlling ownership when such carrier is transporting property by aircraft or by motor vehicle," such as the CAA's members, *see* 49 U.S.C. § 41713(b)(4)(A) (1994).

This case concerns the "safety regulatory authority of a State with respect to motor vehicles" preserved by the FAAAA. 49 U.S.C. §§ 14501(c)(2)(A) (Supp. V 1999), 41713(b)(4)(B)(i) (1994). The FAAAA has no effect on traffic laws and other generally applicable safety regulations that do not relate to cargo carriers' price, route, or service. Petitioners nevertheless argue that the FAAAA permits municipalities to enact and enforce safety regulations that are related to carriers' price, route, or service, despite the Act's explicit preemption of such laws, through State delegation of the safety authority preserved by Section 14501(c)(2)(A). Because Congress intended to "level the playing field"

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[1] Letters of consent to the filing of this brief have been filed with the Clerk of the Court. *See* Sup. Ct. R. 37. Counsel for the parties to this action did not write this brief, in whole or in part, and only *Amicus*, one of its members (United Parcel Service, Inc.), and its counsel of record made monetary contributions to the preparation and submission of this brief. *See* Sup. Ct. R. 37.6.

between air and motor carriers with respect to preemption, and the CAA's members are among the "national and regional carriers attempting to conduct a standard way of doing business" that Congress intended to benefit from FAAAA preemption (H.R. Conf. Rep. No. 103-677, at 82, 87 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1754, 1759) the CAA and its members have a significant interest in the outcome of this case.

STATEMENT

The FAAAA contains a broad motor carrier preemption provision, 49 U.S.C. § 14501(c), which provides in relevant part:

> Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) . . . with respect to the transportation of property.

49 U.S.C. § 14501(c)(1). The Act also includes a companion provision with identical preemptive language that addresses transportation of property by air carriers or by an air carrier and its affiliated motor carrier, known as an "intermodal" carrier. It preempts State and local laws "related to a price, route, or service" of "an air carrier or carrier affiliated with a direct air carrier through common controlling ownership when such carrier is transporting property by aircraft or by motor vehicle." 49 U.S.C. § 41713(b)(4)(A). Both of the FAAAA preemption provisions contain subsections that identify "Matters Not Covered," which state in part that the rule of preemption "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. §§ 14501(c)(2)(A), 41713(b)(4)(B)(i).

This case presents the question whether the FAAAA permits municipalities to enact and enforce safety regulations that are related to the price, route, or service of motor carriers of property that are subject to the Act's protections, such as respondent tow truck operator. Petitioners argue that such regulation is permissible because States may delegate to municipalities the "safety regulatory authority of a State with respect to motor vehicles" preserved by the FAAAA. Proper resolution of these issues requires knowledge of Congress's policy toward interstate and intrastate transportation of property, evolving from historical regulation to substantial deregulation implemented in large part through the FAAAA.

A. Federal And State Regulation Of Cargo Transportation

Historically, Congress heavily regulated the interstate transportation of cargo, whether by rail, motor, or air carriage. *See, e.g.*, Interstate Commerce Act of 1887, § 3, 24 Stat. 379, 380 (prohibiting rate discrimination by interstate rail carriers); Motor Carrier Act of 1935, Pub. L. No. 255, § 217, 49 Stat. 543, 560-61 (requiring interstate motor carriers to file tariffs with Interstate Commerce Commission); Civil Aeronautics Act of 1938, Pub. L. No. 706, § 403(a), 52 Stat. 973, 992 (requiring interstate air carriers to file tariffs with Civil Aeronautics Authority). From the inception of the Interstate Commerce Act in 1887, this Court has described Congress's exercise of its powers over interstate cargo transportation in the broadest possible terms. *See, e.g., Boston & Maine R.R. v. Hooker*, 233 U.S. 97, 110 (1914) ("the subject of interstate transportation of property has been regulated by Federal law to the exclusion of the power of the States to control in such respect by their own policy or legislation").

Congress did not, however, regulate the *intrastate* prices, routes, and services of intrastate or interstate cargo carriers;

any such regulation was left to the States. *See, e.g., City of Dallas v. Southwest Airlines Co.*, 494 F.2d 773, 776 (5th Cir. 1974) ("Congress has not pre-empted the field of the economic regulation of air carriers, and the states have the power to act so long as there is no conflict with federal law"); H.R. Conf. Rep. No. 103-677, at 86 (prior to enactment of FAAAA, 41 States "regulate[d], in varying degrees, intrastate prices, routes and services" of intrastate and interstate motor cargo carriers).

Congress also has permitted States to regulate intrastate commerce affecting interstate carriers, within prescribed limits, in matters such as motor vehicle safety standards, *see* 49 U.S.C. § 30103(b) (1994); commercial motor vehicle safety, *see* 49 U.S.C. §§ 31131-31147 (1994 & Supp. V 1999); the size of motor vehicles, *see* 49 U.S.C. §§ 31111-31113 (1994 & Supp. V 1999); the transportation of hazardous cargo, *see* 49 U.S.C. § 5125 (1994); and minimum amounts of financial responsibility related to insurance and self-insurance, *see* 49 U.S.C. § 14504 (Supp. V 1999).

B. Deregulation Of Cargo Carriers

1. Air Carriers

In 1977, Congress substantially deregulated air carriers of cargo, via the Act of November 9, 1977, Pub. L. No. 95-163, 91 Stat. 1278. Among other things, the Act eliminated the Civil Aeronautics Board's authority to prescribe just and reasonable rates for all "interstate . . . air transportation," and restricted that authority solely to the "interstate air transportation of persons, air transportation of property within the State of Alaska, [and] air transportation of property within the State of Hawaii." Act of November 9, 1977, § 18(a), 91 Stat. at 1286-87.

In 1978, Congress extended deregulation to all air transportation, including the transportation of passengers, substantially reducing and eventually eliminating the Civil

Aeronautics Board's power over the rates of interstate air passenger carriers. Airline Deregulation Act of 1978 ("ADA"), Pub. L. No. 95-504, §§ 37(a), 40(a), 92 Stat. 1705, 1741, 1745. The ADA also freed air carriers, including air cargo carriers, from State regulation of *intrastate* price, route, or service:

> [N]o State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision . . . relating to rates, routes, or services of any air carrier . . . .

Id. § 4(a), 92 Stat. at 1708.[2]

2. Motor Carriers

In 1980, finding that the cargo transportation industry had become "increasingly competitive," Congress began taking "a series of steps to deregulate" motor carriers of cargo. H.R. Rep. No. 104-311, at 91 (1995), *reprinted in* 1995 U.S.C.C.A.N. 793, 803. The Motor Carrier Act of 1980, Pub. L. No. 96-296, § 12, 94 Stat. 793, 802-03 (1980), reduced the authority of the Interstate Commerce Commission ("ICC") over motor carriers' limited liability rates. In 1994, Congress eliminated the requirement that motor carriers of property file tariffs with the ICC. *See* Trucking Industry Regulatory Reform Act of 1994, Pub. L. No. 103-311, § 206, 108 Stat. 1683, 1684.

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[2] The ADA provision preempting State laws "relating to rates, routes, or services of any air carrier" was originally codified at 49 U.S.C. app. § 1305 (1988). It was recodified as 49 U.S.C. § 41713(b)(1)-(3), and the quoted language was changed to "related to a price, route, or service," as part of a revision and recodification of Title 49 that made no "substantive change" in the law. Pub. L. No. 103-272, secs. 1(e), 6(a), § 41713(b), 108 Stat. 745, 862, 1143, 1378 (1994).

3. The FAAAA

Thus, by 1994, Congress had taken steps substantially to reduce *federal* regulation of both air and motor cargo carriers, but had preempted *State* laws related to the price, route, or service *of only air carriers*. Moreover, as Congress later noted, at least one court of appeals had ruled that the ADA preempted State laws related to the *trucking* operations of cargo air carriers. *See* H.R. Conf. Rep. No. 103-677, at 87 (discussing *Federal Express Corp. v. Cal. Pub. Utilities Comm'n*, 936 F.2d 1075 (9th Cir. 1991)).

Congress sought to eliminate any differences between the preemption protection afforded to air and motor carriers of cargo through its enactment of the FAAAA in 1994. The FAAAA was designed "to as completely as possible level the playing field between air carriers on the one hand and motor carriers on the other with respect to intrastate economic trucking regulations." *Id.* at 82.[3] Section 601 of the FAAAA, entitled "Preemption of Intrastate Transportation of Property," addresses air and motor carriers in two companion preemption provisions. Section 601(b) added a new air carrier preemption provision, 49 U.S.C. § 41713(b)(4), which preempts State and local laws "related to a price, route, or service" of "an air carrier or carrier affiliated with a direct air carrier through common controlling ownership when such carrier is transporting property by aircraft or by motor vehicle."[4] FAAAA § 601(b), 108 Stat. at 1605. Section 601(c)

[3] *See also* H.R. Conf. Rep. No. 103-677, at 88 ("it is clear that all air carriers and carriers affiliated with a direct air carrier through common controlling ownership, motor carriers and motor private carriers involved in the transportation of property are covered by the preemption").

[4] Upon enactment of the FAAAA, air carriers of property were no longer covered by the ADA, but instead became subject to the FAAAA's new air carrier preemption provision, Section 41713(b)(4)(A), which also applies to intermodal air/motor carriers. Even after the effective date of the FAAAA, however, some courts have continued to apply ADA preemption to air cargo carriers. *See, e.g., Read-Rite Corp. v. Burlington*

added a motor carrier preemption provision, currently codified as amended at 49 U.S.C. § 14501(c), which preempts State and local laws "related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4) of this title) or any motor private carrier with respect to the transportation of property."[5] *Id.* § 601(c), 108 Stat. at 1606.

The FAAAA's two preemption provisions were designed to eliminate for all cargo carriers the "patchwork of regulation" that State law had previously imposed on motor and intermodal air/motor cargo carriers. H.R. Conf. Rep. No. 103-677, at 87. Section 601 of the FAAAA includes Congress's express findings that State regulation of motor cargo carriers had "imposed an unreasonable burden on interstate commerce [and] impeded the free flow of trade, traffic, and transportation of interstate commerce." FAAAA § 601(a)(1), 108 Stat. at 1605. As explained by the House Conference Committee Report, FAAAA preemption was "necessary to facilitate interstate commerce" because:

> State economic regulation of motor carrier operations causes significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology and curtails the expansion of markets. . . .

Air Express, Ltd., 186 F.3d 1190, 1197 (9th Cir. 1999) ("state law regulating the scope of air carrier liability for loss or damage to cargo is preempted by the ADA"). Nonetheless, by its express terms, it is the air carrier preemption provision of the FAAAA that applies whenever an air carrier "is transporting property by aircraft or by motor vehicle." 49 U.S.C. § 41713(b)(4)(A).

[5] The motor cargo carrier preemption provision of the FAAAA was originally codified as 49 U.S.C. § 11501(h) (1994), and was recodified as Section 14501(c) as part of the ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803, discussed *infra* at pp. 11-12.

> *The sheer diversity of these regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business.*

H.R. Conf. Rep. No. 103-677, at 87 (emphasis added).

To accomplish these goals, Congress used the same preemptive language as in the ADA, *see supra*, p. 5 & n.2, defining the preempted State and local laws as those "related to a price, route, or service" of air, motor, or intermodal carriers of property. Congress also expressly incorporated "the broad preemption interpretation adopted by the United States Supreme Court in *Morales v. TransWorld Airlines, Inc.*, 504 U.S. [374 (1992)]." H.R. Conf. Rep. No. 103-677, at 83. Interpreting the ADA, the *Morales* Court had concluded that "[t]he ordinary meaning of ['relating to'] is a broad one—'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with,'—and the words thus express a broad pre-emptive purpose." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (citation omitted). Based on that ordinary meaning, as well as cases interpreting the "relates to" language of the ERISA preemption provision, the Court had held that "State enforcement actions having a connection with, or reference to, airline 'rates, routes, or services' are pre-empted" by the ADA. *Id.* at 384.[6] The *Morales* Court

[6] Subsequent to *Morales*, the broad interpretation of the "relates to" language in the ERISA preemption provision on which the *Morales* Court relied has been criticized. *See, e.g., Cal. Div. of Labor Standards Enforcement v. Dillingham Constr., Inc.*, 519 U.S. 316, 336 (1997) (Scalia, J., concurring) (Supreme Court's "first take on [ERISA] was wrong"). Regardless of subsequent developments in ERISA preemption cases, however, Congress intended to incorporate into the FAAAA "the broad preemption interpretation" described in the *Morales* opinion. H.R. Conf. Rep. No. 103-677, at 83. Congress's choice to adopt *Morales* as the scope of FAAAA preemption must be honored, even if this Court ultimately determines that the scope of preemption recognized in *Morales* was too broad under ERISA or the ADA. In evaluating legislative intent, "the relevant inquiry is not whether Congress correctly perceived the then state of the law, but rather what its perception of the law was," even if "that understanding of Congress was in some ultimate sense incorrect." *Brown v. General Services Admin.*, 425 U.S. 820, 828 (1976).

had also concluded that application to air carriers of such generally applicable laws as those against prostitution and gambling would not be preempted by the ADA because their connection to airline price, route, or service was too "'tenuous, remote, or peripheral'" to trigger preemption. *Id.* at 390 (citation omitted).

At the same time that Congress placed that broad preemption language in the FAAAA, it also included in each preemption provision a subsection entitled "Matters Not Covered." Congress there provided, in relevant part, that the preemption rule

> shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization[.]

FAAAA sec. 601(b), (c), §§ 41713(b)(4)(B)(i) & 11501(h)(2)(A), 108 Stat. at 1605-06 (codified as amended at 49 U.S.C. §§ 14501(c)(2)(A), 41713(b)(4)(B)(i)).

Congress specifically identified each of the four matters listed in the "Matters Not Covered" sections quoted above because each was, and is, the subject of a statutory grant of congressional authority to permit State regulation within defined limits. *See* 49 U.S.C. § 5125 (transportation of hazardous cargo), § 14504 (minimum amounts of financial responsibility related to insurance), §§ 31111-31113 (restrictions on size of motor vehicles), § 30103(b) (motor

vehicle safety standards), §§ 31131-31147 (commercial motor vehicle safety). Congress used the "Matters Not Covered" to clarify that the authority granted by those other statutes was not repealed by the FAAAA. Importantly, however, Congress explicitly rejected the idea that States could use the authority preserved by the "Matters Not Covered" to regulate price, route, or service:

> There has been concern raised that States, which by this provision are prohibited from regulating intrastate prices, routes and services, may instead attempt to regulate intrastate trucking markets through its unaffected authority to regulate matters such as safety, vehicle size and weight, insurance and self-insurance requirements, or hazardous materials routing matters. *The conferees do not intend for States to attempt to de facto regulate prices, routes or services of intrastate trucking through the guise of some form of unaffected regulatory authority.*

H.R. Conf. Rep. No. 103-677, at 84 (emphasis added).

Congress further demonstrated its intent to ensure that the unaffected areas of State authority enumerated in the "Matters Not Covered" not be used to regulate cargo carriers' price, route, or service by declaring that "State regulation in those areas is not a price, route or service and thus is unaffected." *Id.* at 84.[7]

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[7] *See also* H.R. Conf. Rep. No. 103-677, at 84 ("[t]his list is not intended to be all inclusive, but merely to specify some of the matters which are not 'prices, [routes] or services' and which are therefore not preempted"); *id.* at 85 ("State authority to regulate safety, financial fitness and insurance, transportation of household goods, vehicle size and weight and hazardous materials routing of motor carriers is unchanged since State regulation in those areas is not a price, route or service and thus is unaffected"). Congress's inclusion of the second clause of Section 14501(c)(2)(A), addressing vehicle size, weight, and hazardous materials routing on State highways, as a matter that does not relate to "price, route, or service" is not further explained in the House Conference Report. Congress presumably intended that only State laws regulating motor carrier routing based on factors other than size, weight, or hazardous cargo relate to a "route" of a motor cargo carrier within the meaning of the FAAAA's general preemption rules.

C. The ICC Termination Act's Amendment Of The FAAAA To Permit Rate Regulation Of Non-Consensual Towing

The legislative history of the FAAAA contains no references to the tow truck industry, which, in contrast to the "national and regional carriers" addressed in the House Conference Report (H.R. Conf. Rep. No. 103-677, at 87), has been described as "widely used for transportation [of vehicles] within a single city or municipality." *Amicus Curiae* Miami-Dade County Br. in Supp. of Pet'r ("Miami-Dade Br.") at 7. Congress first specifically referenced tow truck operators in the FAAAA preemption provisions in 1995, when it enacted the ICC Termination Act. In addition to eliminating the ICC,[8] that Act recodified the motor carrier preemption provision of the FAAAA as 49 U.S.C. § 14501(c), and added a new subsection to the "Matters Not Covered" section, which provides that the preemption also

> does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation,

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[8] Through deregulation, Congress did not abandon federal supremacy in regulating interstate cargo transportation, or leave regulation to a patchwork quilt of innumerable sets of State and local legislative, administrative, and judicial standards. Rather, Congress reaffirmed its intent that motor carriers continue to be governed by uniform, federal rules:

> Since motor carrier transportation is a truly interstate industry, *it is critical to the smooth functioning of commerce that there be Federal commercial rules established to ensure that all interstate transportation is subject to the same rules and procedures. Otherwise, a motor carrier would be potentially subject to 50 different rules for operation.*

H.R. Rep. No. 104-311, at 85 (emphasis added).

> or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

ICC Termination Act, sec. 103, § 14501(c)(2)(C), 109 Stat. at 899 (codified at 49 U.S.C. § 14501(c)(2)(C) (Supp. V 1999)).[9] Since enactment of the ICC Termination Act, lower courts generally have held that tow truck operators are motor carriers of property within the scope of the FAAAA. *See, e.g., A&A Wrecker Serv. v. City of Galveston*, No. G95-111, 1996 U.S. Dist. LEXIS 21513, at *15 (S.D. Tex. June 10, 1996).[10]

D. Requests To Congress To Re-Regulate Tow Truck Operators

Since the FAAAA was first enacted, Congress repeatedly has been asked to exempt tow truck operators from the scope of preemption, but has rejected such requests.[11] For

[9] Unlike the "Matters Not Covered" described in the House Conference Report as "matters which are not 'prices, rates or services' and which are therefore not preempted" (H.R. Conf. Rep. No. 103-677, at 84), Section 14501(c)(2)(C), added by the ICC Termination Act, plainly does address price. The addition of Section 14501(c)(2)(C), however, does not alter Congress's description of the "Matters Not Covered" in Section 14501(c)(2)(A) as matters that "are not 'prices, rates or services'"; nor does it change Congress's explicit intent to prohibit the States from "attempting to de facto regulate prices, routes or services of intrastate trucking through the guise of some form of unaffected regulatory authority" set forth in Section 14501(c)(2)(A). H.R. Conf. Rep. No. 103-677, at 84.

[10] *Amicus Curiae* Miami-Dade County argues that Congress's Commerce Clause powers do not permit preemption of purely local towing operations. Miami-Dade Br. at 5-9. Because it is unquestioned that Congress has authority to preempt State and local laws related to the price, route, or service of the air and intermodal air/motor cargo carriers that are members of *Amicus* CAA, it takes no position on that argument.

[11] Almost immediately upon enactment of the FAAAA, bills were introduced in both the House and the Senate to amend the Act so that it would not apply to tow truck operators. *See, e.g.*, Intrastate Motor Carrier Transportation Technical Corrections Act of 1994, S. 2454, 103rd Cong. (1994); Intrastate Tow and Wrecker Truck Transportation Technical Correction Act of 1994, H.R. 5123, 103rd Cong. (1994) (version 3, introduced Nov. 30, 1994). Similar bills were also introduced in 1995. *See, e.g.*, S. 1368, 104th Cong. (1995) (amending FAAAA so that it would "not apply to the provision of tow or wrecker services"). In 2000, another bill was introduced, H.R. 4955, 106th Cong. (2000), to "restore full state and local authority over all aspects of tow truck operations." 146 Cong. Rec. 1321 (2000) (statement of Rep. Moran). None of these bills was enacted.

example, when amending the FAAAA to add 49 U.S.C. § 14501(c)(2)(C), permitting States and local governments to enforce laws relating to the price of non-consensual tows, Congress "had been asked to go farther and permit States and political subdivisions thereof to re-regulate all aspects of non-consensual tow truck services." H.R. Rep. No. 104-311, at 120. Congress made a policy choice *not* to re-regulate, and instead "struck a balance between the need to protect consumers from exorbitant towing fees and the need for a free market in towing services." *Id.*

E. The Regulations At Issue

The challenged regulations, Chapter 549 of the Columbus, Ohio Business Regulation & Licensing Code, entitled "Tow Trucks," expressly regulate the manner in which tow truck operators are permitted to provide service. *See* Pet. App. 36A-47A. The regulations dictate the circumstances in which tow truck operators are permitted to solicit business at an accident scene and prohibit them from towing vehicles picked up within the City unless they have obtained a local license. *Id.* at 37A-38A, 40A (§§ 549.02, 549.065). The regulations also require that tow truck operators maintain and show proof of liability insurance above specified minimum amounts, obtain City approval of the "trade name, design, color scheme or method of painting or lettering" of tow trucks, and maintain certain records. *Id.* at 44A-47A (§§ 549.14-549.16, 549.18).

Petitioner City of Columbus "does not dispute that its towing regulations relate to the price, route, or service of tow trucks, and therefore are encompassed by the general rule of preemption found in 49 U.S.C. § 14501(c)." Appellants' Final Reply Br., *Ours Garage & Wrecker Serv. v. City of Columbus*, No. 00-3409 (6th Cir. filed Aug. 22, 2000) ("Appellants' Reply Br.") at 1.

SUMMARY OF ARGUMENT

I. Petitioners and their *amici* fail to distinguish between local laws, including safety regulations, that relate to a carrier's price, route, or service, and those that do not. That distinction is critical. By its plain terms, the FAAAA preempts only those State and local laws that are "related to a price, route, or service" of an air, motor, or intermodal air/motor carrier of property. The FAAAA has no effect whatsoever on laws that do not relate to a carrier's price, route, or service, such as generally applicable traffic laws and other safety regulations governing safe operation of motor vehicles. Such laws are too remote from regulation of prices, routes, or services of cargo carriers to trigger preemption. *See Morales*, 504 U.S. at 390. Thus, contrary to the arguments of petitioners and their *amici*, FAAAA preemption does not prevent enforcement of local traffic laws and other safety regulations that do not relate to cargo carriers' price, route, or service. Enforcement of those laws addresses petitioners' safety concerns.

Although FAAAA preemption does not interfere with local safety, petitioners' proffered interpretation of the FAAAA as permitting enforcement of local safety regulations that relate to cargo carriers' price, route, or service would interfere with interstate commerce. FAAAA preemption applies to all cargo carriers, not merely tow truck operators. Permitting local governments throughout the country to enforce safety regulations related to cargo carriers' price, route, or service—such as petitioners' regulations requiring carriers to obtain a

local license and obtain local approval of their trade name and the color and design of their vehicles—would resurrect the very impediments to national and regional cargo carriers that Congress intended to preempt. Whether Congress has legislated wisely in including tow trucks in FAAAA preemption, and in declining requests to allow local governments to re-regulate the tow truck industry, is not a matter for the courts to decide.

II. In the course of deciding the question presented, which addresses whether the FAAAA permits States to delegate to municipalities whatever "safety regulatory authority of a State with respect to motor vehicles" may be preserved by the FAAAA, this Court need not, and should not, determine the scope of the States' authority to enforce safety regulations that fall within the FAAAA's general rule of preemption. The district court and court of appeals did not address the extent of the authority preserved by Section 14501(c)(2)(A). Instead, those courts addressed whether Section 14501(c)(2)(A) permits delegation; having concluded that it does not, they held that the FAAAA preempts petitioners' regulations, which petitioners concede fall within the FAAAA's general preemption rules.

The extent of State authority to enforce safety regulations related to the price, route, or service of cargo carriers is an important question with potentially dramatic consequences for the national and regional carriers that Congress intended to benefit from FAAAA preemption. While petitioners' arguments here are premised on the *assumption* that States have authority to enforce safety regulations that relate to the price, route, or service of carriers covered by the FAAAA preemption, Congress made clear that it did *not* intend for States "to attempt to de facto regulate prices, routes or services of intrastate trucking through the guise of some form of unaffected regulatory authority." H.R. Conf. Rep. No. 103-677, at 84. The limited nature of State regulatory

authority over "commercial motor vehicle safety"—which extends only to enforcement of accident-prevention regulations that apply to *all* commercial motor carriers, including passenger carriers—contradicts petitioners' assumptions about the broad scope of the State safety authority preserved by the FAAAA. In addition, petitioners' assumptions about the scope of State safety authority are inconsistent with the federal "single-State registration system," which permits only a single registration State—not multiple States or municipalities—to impose the minimum insurance requirements that petitioners seek to enforce via the "safety regulatory authority of a State with respect to motor vehicles."

This issue of crucial importance to interstate cargo carriers such as *Amicus* CAA's members is far too important to be decided based on petitioners' unchallenged assumptions. A determination of the scope of the States' "safety regulatory authority of a State with respect to motor vehicles" preserved by the FAAAA, which was not addressed by the courts below and is not presented by the petition, should await resolution until it is squarely presented to the Court.

ARGUMENT

I. THE FAAAA DOES NOT PREEMPT STATE OR LOCAL TRAFFIC LAWS OR OTHER GENERALLY APPLICABLE SAFETY REGULATIONS THAT DO NOT RELATE TO THE PRICE, ROUTE, OR SERVICE OF CARRIERS OF PROPERTY.

Petitioners and their *amici* paint a bleak picture of the world that purportedly would exist if FAAAA preemption were applied to local safety regulations. For example, petitioners claim that "even municipal one-way-street laws would be preempted" (Pet'rs Br. at 28), while the United States argues that local governments would be "divest[ed] . . . of any role in the furtherance of motor carrier safety" and

"categorically foreclosed from regulating commercial motor carrier safety" (*Amicus Curiae* United States Br. in Supp. of Pet'rs ("United States Br.") at 2, 10).[12]

The reality is far different. FAAAA preemption applies only to State and local laws that are "related to a price, route, or service" of an air, motor, or intermodal air/motor carrier of property. 49 U.S.C. §§ 14501(c)(1), 41713(b)(4)(A). By its plain terms, the Act has no effect at all on the myriad State and local laws that do not relate to cargo carriers' price, route, or service, or State delegation of authority to enforce such laws. The argument that FAAAA preemption threatens enforcement of local traffic laws and other generally applicable safety regulations that do not relate to carriers' price, route, or service is unfounded.

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[12] In claiming a presumption against preemption (United States Br. at 15), the United States fails to address *United States v. Locke*, 529 U.S. 89, 108 (2000), in which this Court held that "an 'assumption' of nonpreemption is not triggered when the State regulates in an area where there has been a history of significant federal presence." There is precisely such a history of federal presence in the field of transporting property in, or affecting, interstate commerce. *See, e.g., Adams Express Co. v. Croninger*, 226 U.S. 491, 505-06 (1913); *N. Am. Phillips Corp. v. Emery Air Freight Corp.*, 579 F.2d 229, 233-34 (2d Cir. 1978) ("Congress has created a broad, comprehensive scheme covering the interstate shipment of freight, aimed at preventing preferential treatment among shippers and establishing national equality of rates and services. This has occupied the field to the exclusion of state law."). Because tow truck operators are considered to be motor carriers of property within the scope of the FAAAA, Congress's history of "significant federal presence" with respect to motor carriers of property supports application of the *Locke* rationale here. If this Court were to conclude that the history of local regulation of tow truck operators (*see* Pet'rs Br. at 2-7) supports application of a presumption against preemption in this context, *Amicus* CAA would respectfully request that any such ruling be limited to tow truck operators and not be made applicable to other carriers of property covered by FAAAA preemption.

This Court rejected similar arguments in *Morales*, holding that the expansive interpretation of the "relate to" language in the Airline Deregulation Act preemption provision adopted in that case would not

> set out on a road that leads to pre-emption of state laws against gambling and prostitution as applied to airlines. Nor need we address whether state regulation of the nonprice aspects of fare advertising (for example, state laws preventing obscene depictions) would similarly "relate to" rates; the connection would obviously be far more tenuous. To adapt to this case our language in *Shaw*, "[s]ome state actions may affect [airline fares] in too tenuous, remote, or peripheral a manner" to have pre-emptive effect.

504 U.S. at 390 (citing *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 100 n.21 (1983)) (alterations in original). Applying *Morales*, lower courts have adopted a common sense approach to preemption of generally applicable State laws. For example, the Fifth Circuit held that a State statute creating a damage claim for retaliatory firing was "far too remote to trigger preemption" under the ADA. *Anderson v. American Airlines, Inc.*, 2 F.3d 590, 597 (5th Cir. 1993). Similarly, courts have held that such generally applicable State laws as employment discrimination statutes, *see, e.g., Wellons v. Northwest Airlines, Inc.*, 165 F.3d 493, 495 (6th Cir. 1999), disability discrimination laws, *see Aloha Islandair, Inc. v. Tseu*, 128 F.3d 1301, 1303 (9th Cir. 1997), and unemployment laws, *see Western Ports Transp., Inc. v. Employment Sec. Dep't*, No. 48294-7-I, 2002 Wash. App. LEXIS 347, at *22-23 (Wash. App. Mar. 4, 2002), have too tenuous a connection to price, route, or service to trigger preemption under the ADA or FAAAA.

Consistent with Congress's intent given its understanding of *Morales*, *see supra*, p. 8, it is clear that State and local governments can (and routinely do) enforce laws of general applicability regulating the operation of motor vehicles by

both air and motor carriers covered by FAAAA preemption. Thus, they enforce safety regulations regarding one-way street laws, speed limits, and prohibitions against reckless driving or unsafe operation of a vehicle. State and local regulation of motor vehicles through such laws affect price, route, or service "'in too tenuous, remote, or peripheral a manner, to have pre-emptive effect.'" *Morales*, 504 U.S. at 390 (citation omitted).

Contrary to the arguments of petitioners and their *amici*, FAAAA preemption does not interfere with local safety. According to *Amicus Curiae* City of Dallas, tow trucks that race to the scene of an accident "invariably violate the traffic ordinances of the City and greatly interfere with and obstruct traffic, both en route and upon arrival at the scene of the wreck." *Amicus Curiae* City of Dallas Br. in Supp. of Pet'rs at 1-2. By conceding that the conduct that concerns local officials is addressed by generally applicable traffic laws, the City of Dallas implicitly acknowledges that enforcement of those laws would address its safety concerns.[13]

In fact, it is the position advanced by petitioners—not application of FAAAA preemption—that would create problems. Because the FAAAA applies to all motor, air, and intermodal carriers of property, petitioners' theory that local governments may enforce safety regulations related to the price, route, or service of such carriers could expose interstate cargo carriers, including *Amicus* CAA's members, to

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[13] Even beyond enforcing traffic laws, petitioners have other means of combating the practice of tow trucks racing to the scene of an accident. As respondents point out (Br. for Resp'ts in Opp'n at 6-7), numerous courts have held that a local government acts as a "municipal proprietor" in contracting with tow truck operators to remove cars from accident scenes and that FAAAA preemption therefore does not apply to rotational towing programs and other measures to combat tow truck "chasing." *See, e.g., Petrey v. City of Toledo*, 246 F.3d 548, 555-59 (6th Cir. 2001), *reprinted in* Pet. App. 13A-20A.

comparable restrictions. For example, petitioners require, among other things, that tow truck operators obtain City approval of the "trade name, design, color scheme or method of painting or lettering" of tow trucks as well as a local license in order to pick up vehicles with the City limits, and also dictate when and how tow truck operators may solicit business. *See* Pet. App. 37A-38A, 40A, 45A-46A (§§ 549.02, 549.065, 549.16).[14] If the FAAAA were interpreted to permit such laws to be enforced against interstate cargo carriers covered by the Act, then national and regional carriers would have to obtain local licenses and local approval of their trade names and the design and color scheme of their delivery vehicles, and obey local restrictions on their manner of soliciting business in order to provide service in any municipality that chose to enact and enforce such regulations. Interstate carriers would be forced to satisfy the varying and potentially conflicting requirements of every municipality that enacted safety regulations that related to their price, route, or service, and/or design their routes to avoid locations in which they were not licensed or that imposed particularly unfavorable restrictions. *Cf.* H.R. Conf. Rep. No. 103-677, at 87-88 (harm to interstate commerce arising from State regulation included that "small package express . . . companies frequently ship[ped] goods across state lines and back into the state of origin to avoid the higher rates for purely intrastate shipments").

Congress did not intend local governments to dictate which national and regional cargo carriers would be permitted to

[14] There is a potentially infinite list of restrictions on carriers' prices, routes, and services that could be imposed in the name of safety. For example, Miami-Dade County invokes safety authority to regulate "abusive practices" and "exploitation" of the public by tow truck operators (*see* Miami-Dade County Br. at 1, 2), and San Francisco requires tow truck operators to accept cash, checks, and credit cards (*see Amici Curiae* City & County of San Francisco, *et al.* Br. in Supp. of Pet'r ("San Francisco Br.") at 10).

make pick-ups or deliveries, the manner in which carriers solicit business, or the trade names and trade dress of the delivery vehicles that they use; nor did Congress intend otherwise to permit local governments to enforce safety regulations related to cargo carriers' price, route, or service. State and local enforcement of such laws would defeat Congress's declared intent to remove impediments to cargo carriers attempting to provide uniform services across States, regions, and throughout the nation. Congress has already determined that State regulation of intrastate price, route, or service of motor carriers of property "*imposed an unreasonable burden on interstate commerce* [and] impeded the free flow of trade, traffic, and transportation of interstate commerce." FAAAA § 601(a)(1), 108 Stat. at 1605 (emphasis added). Resurrecting a patchwork quilt of varying and conflicting regulation of cargo carriers, this time at the local level, not only would contradict Congress's express intent to preempt such laws, it would create burdens on interstate commerce that Congress explicitly has found to be unreasonable. *Id. See Healy v. Beer Inst.*, 491 U.S. 324, 336 (1989) (burdens imposed on interstate commerce must be assessed "not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other States and what effect would arise if not one, but many or every, State adopted similar legislation").[15]

[15] *Amicus* CAA takes no position on the constitutionality of local safety laws relating to price, route, or service that are enforced solely against purely local carriers that provide services only within the locality's boundaries. However, application of such laws to interstate carriers, such as the CAA's members, would impermissibly burden interstate commerce, even if they applied solely to transportation taking place entirely within city limits. National and regional carriers would have to identify packages travelling locally, treat those packages differently than other packages, comply with varying and possibly inconsistent local regulations, and potentially route packages in a manner dictated by the need to avoid

It is no answer to the grave problems presented by local enforcement of safety regulations related to the price, route, or service of carriers covered by the FAAAA to argue that public safety is best served through local governments' enacting and enforcing laws that specifically regulate tow truck operators. *See, e.g.*, San Francisco Br. at 9-10. Regardless of the wisdom of its choice, Congress has included tow truck operators within the scope of motor carriers of property covered by the FAAAA preemption rules (with the sole exception of local regulation of the price of non-consensual tows) and has repeatedly rejected requests to re-regulate the tow truck industry. *See supra*, pp. 12-13 & n.11. Petitioners' dissatisfaction with Congress's preemption policy is a legislative matter properly addressed to Congress, not the courts.

II. THE QUESTION OF THE PROPER SCOPE OF STATE AUTHORITY TO ENFORCE SAFETY REGULATIONS RELATED TO CARGO CARRIERS' PRICE, ROUTE, OR SERVICE HAS NOT BEEN PRESENTED TO THE COURT AND SHOULD NOT BE DECIDED AT THIS TIME.

No real question exists that petitioners' challenged regulations are "related to a price, route, or service" of tow truck operators and therefore fall within the FAAAA's motor carrier preemption provision set forth in 49 U.S.C. § 14501(c)(1), as petitioners conceded below. *See* Appellants' Reply Br. at 1. Chapter 549 of the City of Columbus Code, entitled "Tow Trucks," expressly regulates which tow truck operators are permitted to perform certain services for vehicles picked up within the City and the manner in which those services are performed. *See, e.g.*, Pet. App. 37A-38A,

cumbersome restrictions rather than based on efficiency. This is precisely the type of patchwork of regulation that Congress found to be an unreasonable burden on interstate commerce. *See* H.R. Conf. Rep. No. 103-677, at 87-88.

40A (§ 549.02 (licensing requirements), § 549.065 (prohibiting solicitation at accident scenes)). The regulations' "express reference" to carriers' service is sufficient in and of itself to satisfy the *Morales* standard for relating to price, route, or service. *See Morales*, 504 U.S. at 388.[16] In addition, by controlling which carriers may perform services and under what terms, the regulations also have a "forbidden significant effect" on service. *Id.*; *see R. Mayer of Atlanta, Inc. v. City of Atlanta*, 158 F.3d 538, 545 (11th Cir. 1998) (FAAAA preempts local licensing ordinances because they "limit who is permitted to provide the services and require that individuals and companies satisfy various criteria before they provide the services").[17]

Petitioners contend (Pet'rs Br. at 16-20) that they may nevertheless enforce the challenged regulations because States are authorized to delegate "the safety regulatory authority of a State with respect to motor vehicles" that is preserved by the "Matters Not Covered" section of the FAAAA motor carrier preemption provision. 49 U.S.C.

[16] Even if the Court's more recent ERISA authorities—rather than the *Morales* standard specified by Congress—were applied, the result would be the same. *See Dillingham*, 519 U.S. at 324-25 (law "relates to" an ERISA plan if it has a "*reference* to such a plan," either by "act[ing] immediately and exclusively upon ERISA plans . . . or where the existence of ERISA plans is essential to the law's operation" (emphasis added; internal quotation marks omitted)); *Dist. of Columbia v. Greater Wash. Bd. of Trade*, 506 U.S. 125, 130 (1992) (striking down law that "specifically refers to welfare benefit plans regulated by ERISA *and on that basis alone is pre-empted*" (emphasis added)).

[17] *Amicus Curiae* Miami-Dade County's assertion that licensing requirements do not relate to carriers' price, route, or service because they do not "restrict the actual route of a tower or limit the type of service the tower can perform" (Miami-Dade Br. at 16-17) ignores both petitioners' admission that the licensing and other regulations at issue do in fact relate to price, route, or service, and the fact that licensing requirements determine which tow truck operators are allowed to provide service. *See R. Mayer*, 158 F.3d at 545.

§ 14501(c)(2)(A); *see also* 49 U.S.C. § 41713(b)(4)(B)(i) (parallel section in FAAAA air carrier preemption provision). The argument rests on the unstated premise that States are permitted to enact and enforce safety regulations that are related to carriers' price, route, or service, and *focuses exclusively on the ability of States to delegate that authority.* Similarly, the district court and court of appeals below addressed only the issue of whether the FAAAA permits States to delegate the safety authority preserved by Section 14501(c)(2)(A), *not the scope of that authority. See* Pet. App. 1A-2A (citing *Petrey*, 246 F.3d at 548, 555, 558-59, 564), 33A-35A; *see also Petrey*, 246 F.3d at 559-64, *reprinted in* Pet. App. 21A-29A.

Amicus CAA respectfully requests that the Court avoid resolution of the scope of the "safety regulatory authority of a State with respect to motor vehicles" preserved by Section 14501(c)(2)(A) until such time that it is squarely presented to the Court. The question of the proper scope of the States' authority to enforce safety regulations related to cargo carriers' price, route, or service is one of great importance to *Amicus* CAA's members. The types of safety regulations that petitioners seek to enforce at a local level, addressing even such matters as carriers' trade names and their delivery vehicles' trade dress, would have dramatic adverse effects on interstate cargo carriers even if enacted on a State level. The resurrection of a patchwork of fifty States' laws related to cargo carriers' price, route, or service—whether or not those laws are designed to promote safety—would reinstate impediments to national and regional carriers attempting to conduct a standard way of doing business and the attendant burdens on interstate commerce that Congress intended to eliminate through FAAAA preemption.

Although petitioners *assume* that the States may enforce such laws, Congress did not intend the "Matters Not Covered" to swallow the general preemption rule. On the contrary, Congress explicitly considered, and rejected, the

idea that States could invoke their "unaffected authority to regulate matters such as safety" to regulate carriers' price, route, or service: *"The conferees do not intend for States to attempt to de facto regulate prices, routes or services of intrastate trucking through the guise of some form of unaffected regulatory authority."* H.R. Conf. Rep. No. 103-677, at 84 (emphasis added); *see supra*, pp. 9-10.

As shown below, petitioners' assumptions about the broad scope of State authority to enforce safety regulations related to the price, route, or service of cargo carriers covered by FAAAA preemption are inconsistent with the limited nature of the "safety regulatory authority of a State with respect to motor vehicles" preserved by the "Matters Not Covered" sections of the FAAAA. State authority over "commercial motor vehicle safety" is limited to enforcement of accident-prevention safety regulations that apply to *all* commercial motor carriers; it does not encompass enforcement of laws that dictate the manner in which motor carriers of property, or particular types of carriers, are permitted to provide service. Petitioners' assumptions about the broad State safety authority preserved by the FAAAA also are inconsistent with the federal single-State registration system, which allows only a single registration State, not multiple States or municipalities, to impose the minimum insurance requirements that petitioners assume are within the "safety regulatory authority of a State with respect to motor vehicles."

A. Petitioners' Assumptions About The Broad Scope Of The Preserved "Safety Regulatory Authority Of A State With Respect To Motor Vehicles" Are Inconsistent With Federal Laws Limiting State Regulatory Authority Over Commercial Motor Vehicle Safety To Enforcement Of Accident-Prevention Laws That Apply To *All* Commercial Motor Carriers.

As the United States acknowledges (United States Br. at 18), the Motor Carrier Safety Act of 1984, Pub. L. No. 98-554, tit. II, 98 Stat. 2832, prohibits State enforcement of any "commercial motor vehicle safety" laws that the Secretary of Transportation determines may not be enforced.[18] *See* 49 U.S.C. § 31141(a) (1994). Regulations promulgated pursuant to Section 31141 prohibit enforcement of State laws found to be "incompatible" with federal safety regulations. 49 C.F.R. § 355.25(a) (2001). To be compatible with federal regulations, and therefore enforceable, a "State law or regulation *must apply to all segments of the motor carrier industry* (*i.e.*, for-hire and private motor carriers of property and passengers)." 49 C.F.R. § 350.333(a) (2001); *see* 49 C.F.R. Pt. 355, app. A (2001) (same).

Congress uses the term "commercial motor vehicle safety" in that Act to address harm to persons and property caused by motor vehicle accidents, expressly finding that:

> (1) it is in the public interest to enhance commercial motor vehicle safety and *thereby reduce highway fatalities, injuries, and property damage*;

[18] The United States concedes that the Secretary has no rulemaking authority under the FAAAA (United States Br. at 27); accordingly, Department of Transportation memoranda addressing the FAAAA's preemptive scope (*id.* at 25-26) "lack the force of law" and are not entitled to *Chevron*-deference. *Christensen v. Harris County*, 529 U.S. 576, 587 (2000).

> (2) improved, more uniform commercial motor vehicle safety measures and strengthened enforcement would *reduce the number of fatalities and injuries and the level of property damage* related to commercial motor vehicle operations . . . .

49 U.S.C. § 31131(b)(1), (2) (1994) (emphases added).[19] The Senate Report accompanying the Motor Carrier Safety Act illustrated "the magnitude of the motor carrier safety problem" addressed by the Act through tables reporting accidents, injuries, property damage, and accident and fatality rates for both motor carriers of property and motor carriers of passengers. S. Rep. No. 98-424, at 2 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4785, 4786. As shown by the Act's findings and legislative history, Congress's purpose of "promot[ing] the safe operation of commercial motor vehicles," 49 U.S.C. § 31131(a)(1) (1994), refers to reducing motor vehicle accidents and the harms they cause.[20]

Thus, State authority with respect to commercial motor vehicle safety is limited to enforcement of safety regulations that address the prevention of accidents in the motor carrier industry generally, and that apply to all commercial motor

[19] The only definition of "motor vehicle safety" anywhere in Title 49 is found in Chapter 301, which is titled "Motor Vehicle Safety." It also addresses the prevention of motor vehicle accidents, defining "motor vehicle safety" as:

> [T]he performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.

49 U.S.C. § 30102(a)(8) (1994).

[20] The Motor Carrier Safety Assistance Program ("MCSAP"), a voluntary grant program for States (*see* United States Br. at 19-21), shares this same goal: "to reduce [commercial motor vehicle]-involved accidents, fatalities, and injuries through consistent, uniform and effective [commercial motor vehicle] safety programs." 49 C.F.R. § 350.101 (2001).

carriers, whether they carry property or passengers. States are prohibited from enforcing commercial motor vehicle safety regulations that target specific segments of the motor carrier industry, such as motor carriers of property or tow truck operators.[21]

That approach is fully consistent with the broad scope of preemption that Congress intended for the FAAAA. Safety regulations that apply to *all* commercial motor carriers, like generally applicable traffic laws, are likely to have only a "'tenuous, remote, or peripheral'" connection to the price, route, or service of cargo carriers. *See Morales*, 504 U.S. at 390 (citation omitted). In contrast, safety regulations that target some or all motor carriers of property are proscribed not only by the Motor Carrier Safety Act but also by the FAAAA, because laws that make "express reference" to the services of such carriers are preempted. *See id.* at 388. States do not have authority to enact or enforce such laws.[22]

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[21] Although the Motor Carrier Safety Act addresses motor *carrier* safety, the scope of the State authority granted by that Act is limited to addressing motor *vehicle* accidents. The State safety authority preserved by the FAAAA is similarly that "with respect to motor *vehicles*," although Congress used the term "motor *carriers*" in the same sentence, when preserving State authority to "regulate motor *carriers*" with respect to minimum amounts of insurance. 49 U.S.C. §§ 14501(c)(2)(A), 41713(b)(4)(B)(i) (emphases added). The general rule of preemption in the FAAAA motor carrier provision, Section 14501(c)(1), also refers to motor *carriers*. When "Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion." *Rusello v. United States*, 464 U.S. 16, 23 (1983). Congress's intentional selection of the term "motor vehicles" in discussing the State regulatory authority preserved by the FAAAA therefore cannot be interpreted to permit States to enforce safety laws regulating the price, route, or service of motor carriers.

[22] Petitioners' assumptions about the broad scope of State safety regulatory authority would also render superfluous Congress's inclusion of highway route controls in the "Matters Not Covered" sections of the

B. Petitioners' Assumptions About The Broad Scope Of The Preserved "Safety Regulatory Authority Of A State With Respect To Motor Vehicles" Also Are Inconsistent With The Federal Single-State Registration System.

The federal framework governing State registration of motor carriers of property further contradicts petitioners' assumptions about the broad "safety regulatory authority of a State with respect to motor vehicles." Through 49 U.S.C. § 14504, Congress directed the Secretary of Transportation to implement a "single State registration system," through which a motor carrier is required to register with only one State. *See* 49 U.S.C. § 14504(c). Congress has mandated that "only a State acting in its capacity as registration State under such single State system may require a motor carrier" to "file satisfactory proof of required insurance or qualification as a self-insurer." 49 U.S.C. § 14504(c)(2)(A)(ii). Compliance with the single-State registration system is the sole avenue for State registration of interstate carriers; any State registration requirement that imposes additional obligations is considered "an unreasonable burden" on interstate commerce. 49 U.S.C. § 14504(b).

The Single-state registration system plainly forbids multiple States, much less thousands of municipalities, to impose additional insurance requirements on motor carriers of property. Petitioners' invocation of State safety authority to impose liability insurance requirements on motor carriers of property (Pet. App. 44A-45A (§ 549.14)) is inconsistent with that federal framework.

FAAAA, 49 U.S.C. §§ 14501(c)(2)(A), 41713(b)(4)(B)(i). If the safety authority preserved by the "Matters Not Covered" encompassed all safety regulations, then the separate enumeration of route controls, which have a connection to safety, would have been unnecessary. *Whitten v. Vehicle Removal Corp.*, 56 S.W.3d 293, 306 (Tex. App. Dallas 2001).

Thus, petitioners' assumptions about the broad scope of State safety authority preserved by Section 14501(c)(2)(A) are fatally flawed. Because this issue is of such importance to interstate cargo carriers, was neither briefed to nor addressed by the courts below or this Court, and is not presented by the writ petition, *Amicus* CAA respectfully requests that the Court defer resolution of the scope of the "safety regulatory authority of a State with respect to motor vehicles" preserved by Section 14501(c)(2)(A) until such time that it is squarely presented to the Court.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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